

ENTERED

May 03, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAIME LUEVANO,

Plaintiff,

VS.

GREG ABBOTT, *et al*,

Defendants.

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CIVIL ACTION NO. 4:18-CV-1390

ORDER OF DISMISSAL

Plaintiff Jaime Luevano is an inmate in the Texas Department of Criminal Justice. He filed a document, styled as a petition for a writ of mandamus, that challenges the conditions of his confinement. Luevano has not paid the filing fee.

Under 28 U.S.C. § 1915(g), an inmate is not allowed to bring a civil action *in forma pauperis* in federal court if, on three or more prior occasions while incarcerated, he brought an action or appeal which was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, unless he is under imminent danger of serious physical injury at the time suit is filed. Luevano has had at least 12 cases dismissed as frivolous. *See Luevano v. Region Directors*, No. 4:12-cv-1022 (S.D. Tex. Apr. 10, 2012); *Luevano v. United States Dist. Judge*, No. 6:12-cv-49 (W.D. Tex. March 5, 2012); *Luevano v. U.S. Dist. Cts. Of Texas*, No. 6:11-cv-203 (E.D. Tex. May 23, 2011); *Luevano v. Office of Inspector General*, No. 5:11-cv-131 (W.D. Tex. Feb. 28, 2011); *Luevano v. Connally Unit*, No. 5:10-cv-831 (W.D. Tex. Oct. 26, 2010); *Luevano v. Texas Supreme Ct.*, No. 5:09-cv-434 (W.D. Tex. June 5, 2009); *Luevano v. Casey*, No. 3:09-cv-583 (M.D.. Pa. May 27, 2009); *Luevano v. U.S. Supreme Ct. Clerks*, No. 1:09-cv-71 (D.D.C. Jan. 13, 2009); *Luevano v. Boykin*, No. 5:08-cv-1844 (N.D. Ohio Oct. 31, 2008); *Luevano v. Richardson*, No. 1:08-cv-781 (D.N.M. Oct. 1, 2008); *Luevano v. Clinton*, No.

2:08-cv-1360 (N.D.N.Y. Apr. 4, 2008); *Luevano v. Board of Disciplinary Appeals*, No. 5:08-cv-107 (W.D. Tex. March 20, 2008). Plaintiff's pleadings do not show that he is under imminent danger of serious physical injury in this case. Therefore, this lawsuit must be dismissed pursuant to 28 U.S.C. § 1915(g).

Even if the pleading could be interpreted to allege that Luevano is in imminent danger of serious physical injury, it is subject to dismissal as frivolous. Luevano's pleading is a single handwritten page of incoherent gibberish. Among the matters he asserts is a complaint that something is amiss because the name of the Clerk of Court for the Southern District of Texas appears on documents Luevano has received from both the Houston and Corpus Christi Divisions, and "can he be in two (2) places at a time?" In addition to naming as defendants the Governor and Attorney General of Texas, the Texas Department of Criminal Justice's Office of the Inspector General, and the United States Department of Agriculture and Food and Drug Administration, Luevano's pleading mentions college professors from West Virginia, Clarkson University, and North Carolina State University, as well as United States Senators Cory Booker of New Jersey, and Chuck Grassley of Iowa.

28 U.S.C. §1915(e)(2)(B)(i) requires dismissal if the action is frivolous or malicious. The Fifth Circuit has noted that "[a] complaint is factually frivolous when the facts alleged are fantastic or delusional scenarios" *Harris v. Hegmann*, 198 F.3d 153, 156 (5th Cir. 1999)(internal quotation marks and citation omitted). Luevano's incoherent rambling is plainly "fantastic or delusional." It must therefore be dismissed.

For the foregoing reasons, the petition for a writ of mandamus (Doc. # 1) is DISMISSED under 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915(g). This dismissal shall count as a strike for

purposes of 28 U.S.C. § 1915(g). The Clerk shall forward a copy of this Order to:

Three_Strikes@txs.uscourts.gov.

It is so ORDERED.

SIGNED on this 3rd day of May, 2018.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge